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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,965	08/04/2003	Paul Alfred Cimiluca	9152R	5180

27752 7590 04/20/2005

THE PROCTER & GAMBLE COMPANY
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EXAMINER

WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/633,965

Applicant(s)

CIMILUCA ET AL.

Examiner

EVERETT WHITE

Art Unit

1623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on 03 March 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

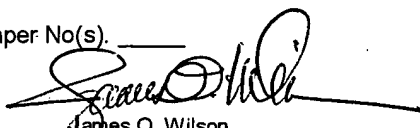
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-43.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

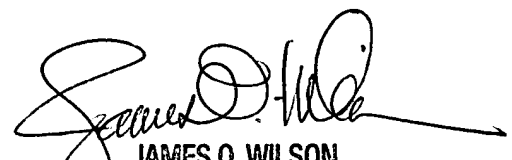
REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s): _____.
13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because: of the reasons of record. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicants argue against the rejection on the ground that the Nakamura et al patent does not teach any desirable ratio of xylose to arabinose and does not teach agglomerates of xylose and arabinose having any specific surrounding layers. This argument is not persuasive since the Nakamura et al patent discloses a water-soluble hemicellulose, which is a polysaccharide containing xylose and arabinose. Nakamura et al discloses that the water-soluble hemicellulose may be used in an emulsified state with fat or oil, which is within the scope of the instant claims which set forth agglomerates comprising a polysaccharide component comprising xylose and arabinose, which may be surrounded by a hydrophobic layer (see column 4, 3rd paragraph). In the same paragraph, Nakamura et al also teaches that the water-soluble hemicellulose as part of a soaking time-shortening agent for grain preparation may be distributed and sold in emulsified or suspended form with a fat or oil, or in solution form in water, saline or a solution of an organic acid such as acetic acid. The teaching of the Nakamura et al patent that the hemicellulose may be in solution form in water, saline or a solution of an organic acid such as acetic acid falls within the instant claims when the agglomerate comprising a polysaccharide component comprising xylose and arabinose is surrounded with a hydrophilic layer. The Nakamura et al patent, which set forth a xylose and arabinose containing polysaccharide (hemicellulose) which is added as a dietary fiber to foods, is combined with the Marlett et al patent to show that xylose and arabinose containing polysaccharide having a ratio of xylose to arabinose of about 3:1, is well known in the art. The Marlett et al patent discloses psyllium seed husks that can be used as a dietary substance to promote laxation and also as a hypocholesterolemic agent (see abstract). Marlett et al teaches the preparation of fractions obtained from psyllium seed husks that comprised mostly of xylose and arabinose. See column 5, lines 3-6 wherein Marlett et al discloses the ratio of weights of xylose to arabinose of Fraction B as being between 2.5 and 4.5, and between 3.0 and 4.0 in a preferred embodiment, which covers the xylose to arabinose ratio set forth in the instant claims. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in this art would be motivated to combine the teachings of the Nakamura et al, Marlett et al and Colliopoulos patents in a rejection of the claims under 35 U.S.C. 103 since all the patents set forth dietary compositions that comprise xylose and arabinose. According, the rejection of Claims 1-43 under 35 U.S.C. 103(a) as being unpatentable over the Nakamura et al patent in view of the Marlett et al patent or the Colliopoulos patent is maintained for the reasons of record.

Applicants further argue that the prior art of record fails to teach or suggest polysaccharide particles that have a mean particle size distribution of from about 0.001 microns to about 150 microns. This argument is not persuasive since the claims are further rejected as being unpatentable over the Nakamura et al and Marlett et al patents as applied to Claims 1-43 above, and further in view of the Barbera patent. The Barbera patent discloses maltodextrin-containing agglomerates of psyllium husk having a particle size wherein 98% minimum passes through 100 mesh screen (equivalent to 150 microns). The motivation for combination of the Nakamura et al and Marlett et al patents with the Barbera patent is that it would have been obvious to one of ordinary skill in this art at the time the invention was made to substitute the polysaccharide composition comprising xylose and arabinose used in the dietary composition established by the combination of the Nakamura et al and the Marlett et al patent with a psyllium-containing composition in view of the recognition in the art, as evidenced by the Barbera patent, that the psyllium material as part of the composition improves the mixability and dispersibility of the composition in liquids.



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